

---

# FINAL RECOMMENDATIONS FOR ALL BOARDS UNDER THE DEPARTMENT (“CROSSCUTTING RECOMMENDATIONS”)

---

## **RECOMMENDATIONS OF THE DEPARTMENT**

The Department has identified several crosscutting issues affecting all boards and the Department’s consumer protection mission, including:

- Recovery of enforcement costs
- Consumer restitution
- Licensing examinations
- Assessment of Internet implications and options
- Sunset review process

**ISSUE #1.** (MODIFY AUTHORITY OF BOARDS FOR COST RECOVERY?) There are attempts being made to modify the authority of boards to recover the investigative and prosecution costs related to enforcement cases (cost recovery). As any such policy change would have implications for all of the Department’s regulatory programs, it encourages review of the issue in that context.

**Recommendation #1:** *To ensure equitable treatment of all regulated professions and meaningful public protection, the Department recommends that all boards have comparable cost recovery authority.*

**Comments:** The Department is aware of current discussion of proposals to modify the authority of boards to recover the investigative and prosecution costs related to enforcement cases (cost recovery). As any such policy change would have implications for all of the Department’s regulatory programs, the Department encourages review of the issue in that context.

Cost recovery has been embraced as a means of ensuring that those who violate the law and thereby generate public expense pay for those costs. Cost recovery for all Department boards was authorized by the Legislature in 1992 to ensure that the consumer protection functions of these state agencies would not be impaired due to enforcement costs.<sup>1</sup> Additionally, proponents argue that cost recovery can serve as a potential deterrent to licensing violations and adds efficiency to the enforcement system by serving as an incentive for both sides to settle cases instead of pursuing protracted litigation. It should also be noted that without adequate cost recovery options, the costs of investigations and disciplinary actions fall on all practitioners.

Conversely, some licensing groups have argued that boards use cost recovery to coerce licensees into settling cases, rather than pursuing their defense. Critics note that cost recovery can amount to as

---

<sup>1</sup> AB 3745, Speier, Chapter 1059 and AB 2743, Frazee, Chapter 1289, Statutes of 1992.

much as \$100,000 per case and suggest that the cost recovery system should be modified to lessen its chilling effect on fairness and due process rights.

A simple analysis of cost recovery data for the eight boards under review shows that less than 2 percent of board enforcement costs are returned each year via cost recovery payments. (See Appendix B for cost recovery data.) Thus, while cost recovery is an important tool for protecting the economic viability of licensing programs, the data suggest that boards are not seeking nor being granted excessive cost recovery awards.

**ISSUE #2. (DEVELOP POLICIES AND PROCEDURES TO IMPROVE CONSUMER RESTITUTION?)** Consumer restitution, in the form of monetary compensation or corrective work, is an effective way of making aggrieved consumers “whole.” However, all boards may not have clear and adequate authority outside of formal disciplinary proceedings to mandate consumer restitution.

**Recommendation #2:** *The Department recommends that board evaluate whether their consumer restitution authority allows them to order or recommend monetary compensation or corrective work for harm, and develop policies and procedures for executing that authority. Where applicable, boards should make consumer restitution a priority, include such directives in disciplinary decisions, and develop mechanisms to encourage monetary refunds or rework prior to initiating formal disciplinary actions.*

**Comments:** Consumer restitution, in the form of monetary compensation or corrective work, is an effective way of making aggrieved consumers “whole.” However, all boards may not have clear and adequate authority outside of formal disciplinary proceedings to mandate consumer restitution.<sup>2</sup> For example, only 2 of the 8 boards under review this year, the Contractors’ State License Board and the Structural Pest Control Board, have reported any significant consumer restitution collections. (See Appendix C for consumer restitution data.) Consumer protection would be improved if board investigations and disciplinary actions included an assessment of consumer loss and resulted in corrective actions. Boards should be directed by the Joint Committee to develop specific policies and procedures for implementing their authority to recommend and order restitution and/or rework.

**ISSUE #3. (BOARDS IMPLEMENTING NEW LICENSING EXAMINATION POLICY?)** In response to the Legislature’s concern over the validity of licensing examinations and the requirements of AB 1105 (Chap. 67, Statutes 1999), the Department has established a new examination update policy. This policy institutes standardized examination development and administration guidelines for all boards. All boards should implement this policy.

**Recommendation #3:** *The Department recommends that all boards should establish procedures to implement the new examination update policy of the Department.*

---

<sup>2</sup> Section 11519 of the Government Code grants DCA boards the general authority to order cost recovery as a condition of probation resulting from a formal disciplinary action.

**Comments:** In response to the Legislature’s concern over the validity of licensing examinations and the requirements of AB 1105 (Jackson, Chapter 67, Statutes of 1999), the Department has established a new examination update policy. This policy institutes standardized examination development and administration guidelines for all Department boards. Licensing examinations are one of the most important elements in establishing the minimum competency of candidates attempting to enter a trade or profession. As such, the validity and effectiveness of licensing examinations are critical to the programs that utilize them, to the candidates who take them, and to the public that is protected as a result.

The Department’s policy guidelines are meant to implement minimum standards for licensing examinations by requiring:

- Examinations to be updated and validated every 3 to 7 years, with a recommended standard of 5 years,
- Examinations to be based on professionally accepted technical and professional standards,
- National examinations to meet California standards and validation policy guidelines, and
- Examinations to utilize passing standards based on minimum, entry- level competency criteria.

In addition to working with the Legislature to develop these policies, the Department is implementing a statewide network of test centers for centralized scheduling and computer-based testing. Computerized testing will lead to a more affordable and secure examination process. With these improvements, the Department anticipates that all licensing examinations will be contemporary and test for the current practice in each regulated field. (For further information on the Department’s efforts to improve licensing examinations, please refer to Appendix D – Department Examination Validation Policy.)

#### **ISSUE #4. (DEVELOP POLICIES AND PROCEDURES ON USES OF THE INTERNET?)** **Should boards adopt consistent policies and procedures as it involves use of the Internet?**

**Recommendation #4:** *The Department recommends that the sunset process require all boards to assess the impact of the Internet on their internal operations and programs, on their licensees, and on consumers. Specifically, boards should identify opportunities for streamlining administrative functions and be prepared to address regulation of Internet businesses.*

**Comments:** Emerging technologies and business and consumer use of the Internet will have an impact on all Department boards. While offering administrative options, the Internet and electronic commerce also present regulatory and public protection challenges. Boards need to examine the feasibility and appropriateness of offering online license application and testing services and information to consumers, as well as assess their profession’s use of the Internet for conducting business. The trend towards “practice without presence” necessitates a review of practices that now increasingly occur outside California’s traditional “marketplaces.” Special attention must be paid to online advice programs, and to consumer issues such as privacy and targeted marketing. The Department’s boards should provide the leadership necessary to begin setting policies governing their licensees’ use of the Internet.

**ISSUE #5. (REVISE THE SUNSET REVIEW PROCESS?) Are there changes necessary to improve and update the sunset review process?**

**Recommendation #5:** *The Department would like to work with the Joint Committee to evaluate, and if necessary, revise the sunset review process to ensure that it is efficient and contemporary.*

**Comments:** While the sunset review process has institutionalized the valuable and regular review of state regulatory programs, the Department's boards have often found the process to be cumbersome, duplicative and labor-intensive. Now that most programs have been through the sunset cycle at least once, and with the advent of emerging technologies that are likely to change both program management and public service dramatically, this may be a good time to review the Joint Committee's focus and process.

Boards frequently assert that because the sunset review process is time consuming and labor-intensive, it often diverts resources from their on-going, core activities. The impact of the effort to prepare for sunset review, the uncertainty of its outcome, and the follow-up effort that may be required to implement legislative changes often consumes more than a four-year cycle for some programs.